

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Whispering Hills Water Company	:	
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Proposed general increase in water rates	:	10-0110
(tariffs filed January 4, 2010)	:	
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**REPLY BRIEF OF THE STAFF OF THE
ILLINOIS COMMERCE COMMISSION**

August 27, 2010

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NOW COME the Staff witnesses of the Illinois Commerce Commission (“Staff”), by and through their undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission’s Rules of Practice (83 Ill. Adm. Code 200.800), and respectfully submit their Reply Brief in the instant proceeding.

I. INTRODUCTION

Initial Briefs (“IB”) were filed on August 13, 2010, by Whispering Hills Water Company (“WHWC”) (“Co. IB”) and Staff. Staff’s Initial Brief identified and responded to many if not most of the arguments raised in the Companies’ Initial Briefs. In this Reply Brief, Staff has incorporated many of those responses by reference or citation to Staff’s Initial Brief. However, in the interest of brevity, Staff has not raised and repeated every argument and response previously addressed in Staff’s Initial Brief. Thus, the omission of a response to an argument that Staff previously addressed simply means that Staff stands on the position taken in Staff’s Initial Brief because further or additional comment is neither needed nor warranted.

II. RATE BASE

A. Adjustment to Other Rate Base Components for the Company's Pro Forma Plant Additions

Staff maintains its proposal to properly reflect the known and measurable changes in accumulated depreciation, accumulated deferred income taxes ("ADIT"), and accumulated amortization of contributions in aid of construction ("CIAC") through the date of the Company's pro forma plant additions. In Whispering Hill's Initial Brief, the Company has repeated its same arguments against Staff's adjustments that it made in testimony. (Co. IB, pp. 5-10.) Staff has already addressed the Company's arguments in its Initial Brief and will not repeat that full discussion here. (Staff IB, pp. 5-14.) Essentially the Company continues to argue that Staff's adjustments violate basic ratemaking principles and the Commission's test year rules.

Additionally in its Initial Brief, the Company opines that the Commission may not freely disregard the precedent of rejecting an adjustment to accumulated depreciation on embedded plant through the date of pro forma plant additions as evidenced in recent ComEd and North Shore / Peoples orders. The Company argues that a contrary determination in this proceeding could constitute an abrupt, arbitrary and capricious departure from past practice. (Co. IB, pp. 8-9.) However, the Company fails to acknowledge that the Commission should base its decision on the facts in the record presented in each particular case. Departure from past practice is necessary when the facts in the record provide sound reasons for a departure from certain prior Dockets. Such facts are present in the record of this proceeding. The Company through its pro forma plant additions adjustment, has included all the actual plant additions for 2009 and, accordingly, has effectively restated or shifted its entire gross plant balance to December

31, 2009. Gross utility plant is the largest component of the Company's rate base. To comprehensively restate gross utility plant to December 31, 2009 without also recognizing the changes in related components for the same period of time will overstate the investment provided by shareholders at that date. The adjustments recommended by Staff properly reflect the known and measurable changes in accumulated depreciation, ADIT, and accumulated amortization of CIAC through the date of the Company's pro forma plant additions and should be adopted by the Commission. (ICC Staff Exhibit 7.0, pp. 6-12.)

III. OPERATING REVENUES AND EXPENSES

A. Rate Case Expense

The Company's update to rate case expense provided with its surrebuttal testimony should be disregarded. Because the Company did not present this information until its surrebuttal testimony (Staff IB, p. 17), Staff made no determination regarding these costs and estimates. The Company then claims in its Initial Brief that the amount of rate case expense it will incur is certain to exceed the amount of rate case expense proposed in the Company's surrebuttal testimony. (Co. IB, p. 11.) There is nothing in the record to support the Company's claim. The amount of rate case expense recommended by Staff for recovery in this proceeding is based upon updated information provided by the Company (which included an estimate of the expenses to be incurred to complete the case) that was available at the time of Staff's last opportunity to file testimony in this proceeding, which was Staff's rebuttal testimony, and should be adopted by the Commission.

B. Test Year O&M and General Expenses

The Company appears to misunderstand Staff's adjustment to test year O&M and General Expenses. It "disagrees with Staff's approach to selectively review and reduce the expense for one account simply because the test year expense for that account may be higher than spending in previous years." (Co. IB, p. 3.) Staff did not selectively review and reduce the expense for one account; Staff's adjustment encompasses all expenses except depreciation, taxes, and amortization of CIAC. Further, Staff's adjustment considers expenses in total over a period of years, which belies the Company's opinion that "Staff's approach fails to recognize that costs associated with a utility's recurring business activities can impact any particular account differently from year to year." (*Id.*)

Staff disagrees with the Companies' position that historical expenses are much less relevant than current expenses and expenses going forward. (*Id.*) When expenses fluctuate dramatically from year to year, historical amounts provide a basis for determining a normal level of expenses on which to base rates. Staff's approach does take into account the fact that costs do tend to increase over time. Staff's approach does so by including 2008, with its large increase, in the 5-year average. Further, the 5-year average on which Staff's adjustment is based is 11.8% higher than the 2009 total expenses reported by the Company. (Staff IB, p. 20.) This refutes the Company's lament that "Staff's averaging approach essentially excludes the full impact of known inflation that has occurred since 2004." (Co. IB, p. 4.)

The Company further criticizes Staff's adjustment because it is not "known and measurable." (*Id.*) This criticism is misplaced. It is the general practice of the

Commission to allow adjustments other than “known and measurable” adjustments in a historical test year; the Commission routinely allows regulatory adjustments and normalization adjustments. Regulatory adjustments reflect Illinois regulatory policy as demonstrated in the Illinois Public Utilities Act (the “Act”), the Commission’s rules found in 83 Illinois Administrative Code, prior Commission orders, and Commission practice. Examples of regulatory adjustments include the removal of promotional advertising and political and lobbying expenses. Normalization adjustments smooth the impact of unusual levels of revenues or expense. They essentially re-state specific test year data to reflect normal conditions. Examples include adjustments for weather normalization, storm damage, tree trimming, and uncollectibles. Staff’s adjustment falls into this normalization category; it restates 2008 expenses to a normalized level of expenses for ratemaking purposes.

The Company’s statement that Staff’s exclusion of 2009 data is inconsistent with the order recently entered in the Ameren Illinois Utilities’ rate case, Docket Nos. 09-0306-0311 Cons. (*Id.*, pp. 4-5) should be disregarded. In order for rulings in the Ameren rate case to be relevant to this proceeding, a showing would have to be made that the facts in the two proceedings are analogous. No such showing has been made; thus, the argument assumes facts not in evidence and is not relevant to the instant proceeding.

Staff’s adjustment, which restates 2008 expenses to a normalized level of expenses, presents a more just and reasonable level of expense that will be in effect during the period that rates are in effect and should be adopted by the Commission.

IV. CONCLUSION

WHEREFORE, for all of the following reasons, Staff respectfully requests that the Commission's order in this proceeding reflect all of Staff's recommendations regarding the Company's request for a general increase in water rates.

August 27, 2010

Respectfully submitted,

/s/
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